

**COMMITTEE ON SUPERIOR COURT
MINUTES**

Friday, February 5, 2010
Arizona State Courts Building
Conference Room 119 A/B
1501 W. Washington Street
Phoenix, AZ 85007

MEMBERS PRESENT:

Honorable James A. Soto
Honorable Eddward Ballinger
Honorable Michael J. Burke
Honorable James Conlogue
Honorable Michael J. Cruikshank
Honorable Robert Duber, II
Honorable Andrew Gould
Honorable Sue Hall
Mr. Joshua Halversen
Mr. Tim Hardy - *telephonic*
Honorable Charles V. Harrington

Honorable Danna Hendrix
Honorable Bethany Hicks
Honorable Michael K. Jeanes
Honorable David Mackey
Honorable Margaret Maxwell
Honorable Stephen F. McCarville
Honorable Colleen McNally
Honorable Monica L. Stauffer
Ms. Susan Wilson

MEMBERS ABSENT:

Honorable Norman Davis
Honorable Kenneth Lee
Ms. JoJene Mills

Mr. Marcus Reinkensmeyer
Honorable Stephen Villarreal

PRESENTERS/GUESTS:

Honorable Bruce Cohen
David N. Horowitz, J.D.
Ms. Kathy Sekardi, AOC
Ms. Katy Proctor, AOC
Ms. Patricia Madsen, Community Legal Services

Ms. Kathy Waters, AOC
Ms. Sharon Yates, AOC
Mr. Paul Julien, AOC

STAFF:

Ms. Kay Radwanski

Ms. Tama Reily

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

With a quorum present, the February 5, 2010, meeting of the Committee on Superior Court (COSC) was called to order by Honorable James A. Soto, chair, at 10:03 a.m.

B. Approval of Minutes

The minutes from the November 6, 2009, COSC meeting were presented for approval.

MOTION: To approve the November 6, 2009, COSC meeting minutes as presented. Motion seconded. Approved unanimously. COSC-10-01

BUSINESS ITEMS/POTENTIAL ACTION ITEMS

A. Report of the Child Support Guidelines Review Committee

Judge Bruce Cohen, chair of the Child Support Guidelines Review Committee (GRC), and GRC member David Horowitz, J.D., presented the final proposed Child Support Guidelines. Judge Cohen briefed the committee on the historical background of the current child support guidelines and the *Income Shares Model* on which they operate. He discussed the areas where the current model falls short in meeting the needs and expenses of children. He then detailed the premise of the *Child-Outcome Based Support* (COBS) model that is being recommended in the new proposed guidelines, and how it addresses the shortcomings observed in the current model. The guidelines will be presented for approval at the March 2010 Arizona Judicial Council (AJC) meeting.

During discussion, Judge Cohen explained that the criteria used to determine the current guidelines produce inequitable results where disparate incomes exist. He also spoke to concerns about the length and apparent complexity of the proposed guidelines instructions. In response to concerns that the change in the child support award in most cases would be nominal, Judge Cohen emphasized that the outliers, those cases in which income disparity is a factor, where change is most needed, are the cases that will appreciate the most significant change.

MOTION: To recommend approval of the proposed Child Support Guidelines as presented. Motion seconded. Motion passed 18-1-0. COSC-10-02

B. Legislative Update

Katy Proctor, AOC legislative liaison, reported on the current session's proposed legislation that may impact the superior courts. She requested feedback from the committee on several bills.

HB 2650/SB 1199; divorce; waiting period; educational programs

This bill has two major provisions. First, it increases the waiting period for divorce from 60 days to 180 days after service of the divorce petition. Second, it introduces changes to the

educational programs and outlines specific instructional areas/topics that must be included in the programs, which could impact cost and the providers of the educational services.

In response to Ms. Proctor's request, members commented that a funding source should be established to address the cost of a mandated educational program, particularly in smaller counties. In addition, members expressed concern that the extended divorce waiting period could negatively impact the children involved in these situations. Finally, it was noted that the longer waiting period could produce an increase in temporary order petitions, which is another cost factor for the courts.

SB 1314; domestic relations

Requires that all court rulings regarding community property and debt or parental fitness include written explanation of the conclusions, analysis of each issue, and a detailed list of facts and laws supporting its decision. Would prohibit sole custody orders where both parents are found fit, unless both parents agree.

Members related concerns that this bill would significantly slow the family court process, and because the community property and debt in dispute in most cases is often of nominal value, the required analysis could make a ruling unmanageable.

HB 2109; superior court; holiday hours

Would allow the presiding judge of the county to adopt the county holiday change that the board of supervisors made last year.

HB 2174; post-judgment garnishment; attorney's writ

Would allow licensed attorneys to issue a writ of garnishment for \$5,000 or less if a judgment has been entered and the writ meets current statutory requirements. Ms. Proctor noted there is a lot of opposition to this bill and it may not move forward. She noted that the AOC does not have an official position on the bill.

HB 2334; costs; superior court; document preparation

Will permit the court to award to the prevailing party the cost of document preparation if the document is prepared by a legal document preparer that is certified by the Supreme Court. Ms. Proctor stated this will likely be a strike everything bill.

C. Petition to Amend the Arizona Rules of Protective Order Procedure

Patricia Madsen, managing attorney of Community Legal Services, addressed the committee on a rule petition recently filed by Judge Elizabeth Finn to amend Rule 4(B)(5)(b) of the Arizona Rules of Protective Order Procedure (ARPOP). The proposed amendment would require limited jurisdiction courts to transfer protective orders when the protected party is the subject of a custody, parenting time, or visitation order. Currently, Rule 4(A)(1) and (2) both prohibit a limited jurisdiction court from issuing a protective order in cases where there is a family law action *pending* in a superior court. The limited jurisdiction court must instead refer the party to the superior court to obtain an order of protection. In contrast, Rule 4(B)(5)(b) currently provides that where there is an *active* custody order involving the defendant or a child of the defendant, a limited jurisdiction court may issue the ex-parte

order, but then must transfer the order to the superior court for anything further. The proposed amendment is intended to clarify and to expand the transfer requirement for protective orders to include injunctions against harassment. The impetus for the change is primarily situations where the terms of a protective order conflict with a custody, parenting time, or visitation order.

Ms. Madsen described examples such as a mother obtaining an injunction against harassment against the father's new girlfriend. In this scenario, if the father resides with the new girlfriend, the injunction will necessarily impact his custody or parenting time order. The transfer of the injunction to the superior court would allow for a judicial officer in the superior court to make determinations regarding access and the terms of access in those cases where a custody order or parenting time order is either directly or indirectly impacted by the terms of the protective order.

During a lengthy discussion, members voiced concerns about lower jurisdiction courts intervening in these cases where the circumstances and history are known by the superior court, and the appropriate parenting time has been determined on that basis. Members feared that this practice could allow parents who are unhappy about their custody orders to manipulate the system to effectively *modify* their custody order by going to another court to request a protective order. Another concern was that the risk of harm to those legitimately seeking protection would be increased under this amendment because the lower court is not *required* to evaluate the legitimacy of the protection order request; therefore, some courts will fail to do so prior to referring the party to the superior court.

On the other hand, some members contended that cases where a custody order is several years old and there is no active litigation or petition pending, concurrent jurisdiction should be the rule, particularly in circumstances of an urgent nature. Others argued that when an emergency motion, such as a protective order, is at issue, if the closest or most available judge is in the municipal court, that judge should absolutely be allowed to issue the order.

After much discussion with no member consensus being achieved, it was suggested that the proposed rule change receive further review and be re-presented to COSC at another date.

MOTION: To recommend further discussion and refinement of the proposed rule change. Motion seconded. Vote: 17-1-0. COSC-10-03

D. ACJA § 6-207: Uniform Conditions of Supervised Probation

Kathy Waters, AOC director of Adult Probation Services, presented proposed changes to ACJA § 6-207: Uniform Conditions of Supervised Probation. Ms. Waters explained that the revisions would introduce evidence based practices into the Uniform Conditions of Probation and ensure consistency among the state courts and probations departments. Ms. Waters reviewed the primary changes to the code and discussed the intended outcome.

During discussion, members suggested some minor language changes for clarification purposes on the Uniform Conditions of Supervised Probation Form.

MOTION: To approve ACJA § 6-207: Uniform Conditions of Supervised Probation with the revisions discussed during the meeting.
Motion seconded. Approved unanimously. COSC-10-04

III. OTHER BUSINESS

- A.** Mr. Paul Julien, AOC Education Services, announced that New Judge Orientation for general jurisdiction judges will take place from April 5, 2010, to April 8, 2010.

Commissioner Maxwell invited members to attend the Pima County Family Law seminar on April 9, 2010. The cost is \$10, which includes lunch.

B. Next Meeting

Friday, May 14, 2010
10:00 a.m. – 3:00 p.m.
Conference Room 119 A/B
Arizona State Courts Building
1501 W. Washington
Phoenix, AZ 85007

C. Good of the Order/Call to the Public

No comments offered.